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Mailed: June 18, 2003
Paper No. 12
ejs

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Wired Solutions, LLC

Serial No. 76/128,628

Erik B. Cherdak of Steptoe & Johnson, LLP for Wired Solutions, LLC.

Chrisie Brightmire King, Trademark Examining Attorney, Law Office 103 (Michael Hamilton, Managing Attorney).

Before Seeherman, Chapman and Bucher, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Wired Solutions, LLC has appealed from the final refusal of the Trademark Examining Attorney to register INTERACTIVE PROFILE CARD for "consulting services[,] namely designing and facilitating implementation of electronic compact disc based business cards for use in personal

computer disc players."¹ Registration has been refused pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), on the ground that applicant's mark is merely descriptive of its identified services.

Applicant and the Examining Attorney have filed appeal briefs. Applicant did not request an oral hearing.

A mark is merely descriptive, and therefore prohibited from registration by the provisions of Section 2(e)(1) of the Trademark Act, if it immediately conveys knowledge of the ingredients, qualities or characteristics of the goods [or services] with which it is used. **In re Gyulay**, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

It is the Examining Attorney's position that INTERACTIVE PROFILE CARD describes a feature or characteristic of applicant's consulting services, namely, that applicant's services are to design and facilitate implementation of a type of business card which contains a company or personal profile. In support of her position, the Examining Attorney has submitted dictionary definitions of the component words of the mark, as well as excerpts of articles taken from both the LEXIS/NEXIS database and

¹ Application Serial No. 76/128,628, filed September 14, 2000, based on an asserted bona fide intention to use the mark in commerce.

materials taken from various websites. In particular, she points to an article at www.multinepal.com/misc/hmc entitled "An innovation in the Digital CD Industry" which refers to "[a] combination of CD and the traditional business card" which "[f]its into the mini CD layer in your CD ROM drive" and lists, as applications for this Multipurpose Digital CD Card:

Business card—A business card with a difference. Containing your company profile or introduction in a streaming multimedia presentation.

Profile Card—For describing about famous personalities and their achievements. [sic] and the list is never ending....²

In addition, the Examining Attorney has submitted evidence that the term "profile card" is used for a card, whether paper or electronic, that provides information about a person or thing. For example:

Using information from "fantasy profile cards" that includes statistics for every major league player....
"Newsbytes," March 4, 1996

"The use of faculty profile cards for disseminating information."
"Special Libraries," January 1994

...City to City features a personal-profile card....

² This article, of course, is not evidence of the truth of the matters discussed in the article, but it does reflect the manner in which the terms are viewed by both the author of the article and those who are exposed to it.

"MacUser," September 1988

The Graduate Profile Card is presented to seniors at graduation and is an accumulation of pertinent information....

www.pcs.k12.va.us/public/school-board/profile-card.htm.

Further, we note from applicant's own statements that its business involves preparing "interactive business cards which are custom-developed for each customer." Response filed August 16, 2001. In addition, applicant, in response to the Examining Attorney's request for information about its services, submitted a printout from the website of bionicarts.com.³ This material contains a "dialog box" with the following entry:

Interactive Profile Cards (IPCs)

The IPC is a business card-sized CD ROM that showcases a company's products/services and dynamically directs consumers to take effective action. Customized using full motion graphics, original audio and distributed like business cards, the IPC is a marketing tool that generates core results and trackable statistics. Where print, TV, and radio ads do not produce clear ROI, the IPC is 100%

³ Although the application is based on applicant's asserted intention to use the mark, and although the submitted material makes no mention of applicant's name (nor does it indicate the specific url from which the material was taken, nor even that it was printed directly from a website), we assume that this material represents applicant's use of its mark in view of the statement in applicant's response that "additional information regarding the use of the MARK in commerce has been attached hereto as EXHIBIT A." (emphasis in original)

accountable for its results using
intuitive client-side tracking.

Applicant's use of the plural form "Interactive Profile Cards" shows that applicant itself promotes INTERACTIVE PROFILE CARD as the name of the product which it designs. Further, applicant's statements in prosecuting this application show that "interactive business card" has a readily understood meaning, while the NEXIS and other evidence demonstrates that "profile card" has an equally well-understood meaning. No thought or imagination is required to understand that INTERACTIVE PROFILE CARD, used in connection with an electronic business card, is an interactive card which contains the profile of an individual or company. The evidence of record demonstrates that the relevant class of consumers would immediately understand, upon seeing the term INTERACTIVE PROFILE CARD in connection with designing and facilitating the implementation of electronic compact disc based business cards, that the subject of the service is this type of business card. The term INTERACTIVE PROFILE CARD thus is merely descriptive of the services, because it immediately conveys information about a central feature of the design and implementation services. See **In re Ethnic Home Lifestyles Corp.**, __USPQ2d__, Serial No. 75/943,763 (TTAB

June 4, 2003) (ETHNIC ACCENTS merely descriptive of "entertainment in the nature of television programs in the field of home décor" because ethnic accents are significant features or the subject matters of such programs).

Applicant argues that its mark is suggestive and not descriptive because "consumers must use thought and imagination to determine the nature of the MARK--there is no immediate way to perceive the MARK and to immediately determine that consulting services in the creative marketing via compact disc field (among others) may be obtained." Brief, p. 3. (emphasis in original) It appears from applicant's brief, as well as its previous submissions, that applicant takes the position that because its mark does not specifically reference services, it cannot be descriptive of its services. For example, in the response filed August 16, 2001, applicant states that "the terms 'service' or 'services' are in no way part of the MARK itself and no reasonable interpretation of same would lead one to immediately deduce that services are in fact provided." (emphasis in original)

However, this argument ignores the well-established principle that the question of descriptiveness is determined not in the abstract, but in relation to the goods on which, or the services in connection with which,

it is used or proposed to be used. See **In re Abcor Development Corp.**, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). Thus, the question is not whether one who was not aware of applicant's services would be able to guess, upon seeing the mark, that applicant provided any services. Rather, the question is whether one who was aware of the services provided by applicant would understand that a feature of the services is the design and implementation of interactive electronic business cards which provide profiles of the individual or company.

We find that INTERACTIVE PROFILE CARD does immediately convey this information, and therefore that the mark is merely descriptive of the identified services.

Decision: The refusal of registration is affirmed.